IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 9240 of 2004

Between:

G.Darshan S/o Jangaiah
H.No.16-2-751/93/A, Sairam Colony,

Near SBH Colony Saidabad, Hyderabad

..... PETITIONER

AND

Ex-Officio Chairman of Mandal Level Authority &

Mandal Revenue officer, Saidabad Mandal
Hyderabad

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction preferably one in the nature of Writ of Mandamus or any other order or direction declaring the order of the respondent passed through proceedings No. B/3510/2003 dt. 19/05/2004 prohibiting the petitioner from extracting the water from the borewell and there by seizing the borewell as illegal, null and void and voilative of Articles 14,19 and 21 of the constitution of India and also voilative of principles of natural justice and also exceeding the powers vested in him as provided under the A.P. Land , Water and Trees Act,

Counsel for the Petitioner: MR.K.VENUMADHAV

Counsel for the Respondent : G.P. FOR REVENUE

The Court made the following

W.P.No.9240 of 2004

ORDER:

This writ petition is filed questioning the proceedings No.B/3510/2003, dated 19-05-2004 prohibiting the petitioner from extracting the water from the bore well for commercial purpose, under sections 11 and 12 of A.P. Land, Water and Trees Act, 2002 (for short the 'the Act').

(2) The contention of the learned counsel for the petitioner is that the respondent without following the due procedure required by the Act has unauthorizedly and illegally seized the bore wells of the petitioner. It is his further contention that before passing any order of seizure there should be a report of a technical expert declaring that in a particular area extraction of ground water is being over-exploited, and there should also be a report from a technical officer, and since these mandatory requirements are not fulfilled in this case the order impugned is liable to be set aside.

(3) Heard the learned Government Pleader for Revenue for the respondent.

(4) When an order of seizure of the bore well of the petitioner was made earlier petitioner filed Writ Petition No.23770 of 2003 questioning the said order of seizure, and took up a plea that he is not exploiting water for commercial purpose, but was using it only domestic purpose. Keeping that contention in view, a learned single Judge of this Court passed the following order on 12-11-2003.

> "The impugned notice clearly discloses that after obtaining technical report from the ground water department prohibitory orders were passed. If the petitioner is drawing water only for domestic purpose, as contended by him, he can always move the Mandal Revenue Officer for appropriate permission with an undertaking that he did not indulge in drawing water and supply the

same to commercial establishments. If the petitioner files any such application, the Mandal Revenue Officer shall consider and pass appropriate orders within one week from the date of receipt of application."

In pursuance of the above order, the petitioner filed an application before the Mandal Revenue Officer, who by his order dated 20-12-2003, in proceedings No.B/3510/2003, gave permission to the petitioner to draw water for domestic purpose with the following conditions.

i. He will extract water only for domestic purpose.

ii. He will not extract water and supply to any residential houses or neighbouring houses or supply to any commercial establishments.

iii. He will use 1-inch diameter pipe only to extract water from the bore well.

iv. He will not use any lorries or water tankers for any mode of transport of water to any place from the bore well of his premises.

Thereafter the Mandal Revenue Officer on the ground that the residents of S.B.H. colony, Saidabad, Hyderabad, complained to him that petitioner has been illegally exploiting water for commercial purpose through lorries and tankers to various persons, visited the premises of the petitioner and found that petitioner was selling water through tankers for commercial purpose, in violation of the terms and conditions of the permission given to him, and hence passed the order seizing the bore well of the petitioner, impugned in this petition.

(5) When the matter came up for hearing earlier, on a representation made by the learned counsel for the petitioner that petitioner is prepared to take out a Commissioner to find out how many bore wells are situate in his premises, an Advocate Commissioner was appointed, who after notice to parties made an inspection of the premises of the petitioner and filed his report dated 22-06-2004, informing that there are three bore wells in the premises of the petitioner. No doubt that report shows that there is no water in two bore wells including the one seized and there is small quantity of water in the third bore well. The fact that there are three bore wells in his premises shows that petitioner is exploiting water in a large scale, obviously for commercial purpose. Probably for that reason only two of his bore

wells have dried up.

(6) I do not find force in the contention of the learned counsel for the petitioner that the provisions of the Act are not complied by the respondent because this is not the first time that the order of seizure of the bore well of the petitioner was passed. Earlier on the basis of a report of the expert, the order dated 10-10-2003 prohibiting the petitioner from extracting the water was passed and that order when challenged in a writ petition referred to above he was directed to approach the Mandal Revenue Officer with an undertaking for release of the seized bore well. Petitioner who gave an undertaking and obtained permission to exploit water for domestic use only, started misusing the permission granted to him. Therefore, questioning of the respondent obtaining the opinion of an expert does not arise. Having violated the terms and conditions, under which he obtained permission, petitioner cannot be heard to say that a *de nova* exercise should be started for seizure of the bore well being exploited for commercial purpose and so I find no merits in this writ petition.

(7) Hence the writ petition is dismissed. No costs.

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C. Somayajulu, J.

14th July, 2004.

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ASSISTANT REGISTRAR

// TRUE COPY //

ECTION OFFICER

To

1. The Ex-Officio Chairman of Mandal Level Authority &

Mandal Revenue officer, Saidabad Mandal
Hyderabad.

2. 2 CCs to Government Pleader for Revenue, High Court Buildings,

Hyderabad (OUT)

3. 2 C.D. copies